Comment on Recent Cases

AGENCY: AUTHORITY UNDER GENERAL POWER OF ATTORNEY. —In *New York Life Insurance Company v. Daley*,[1] an action was brought on a promissory note signed by the defendant through her husband as her attorney in fact. The note was given to pay the premium on a life insurance policy issued upon the life of the husband wherein the defendant was named as beneficiary, the beneficiary being subject to change at the will of the insured. The power of attorney is in the unrestricted general form commonly used in this state giving authorization to perform a great variety of acts for the use and benefit of the principal which include almost every conceivable mode of dealing with real and personal, tangible and intangible property, enumerating among other powers the power to sign notes in the name of the principal, and "to make, do and transact every kind of business of what nature and kind soever".

The court held that, under the power of attorney given, the principal was not liable on the note as she had no vested interest in the life insurance policy and the note was not executed in pursuance of the powers given. The court applied the rule that powers of attorney must be construed strictly and not extended by implication unless absolutely necessary to carry out the powers delegated.[2] This rule is correct as applied to powers of attorney enumerating certain separate and specific powers and concluding with general terms. It is held that the language, however general in its form, when used in connection with a particular subject-matter will be presumed to be used in subordination to that matter, and although the act done may be for the use and benefit of the principal yet if it is not within the powers expressly given the principal will not be bound.[3]

However, it is submitted that the court erred in applying this strict construction to the power of attorney in the principal case. The purpose of the principal in giving such a power is to confer on the attorney authority to act in all manner of business for the use and benefit of the principal, substituting the agent in the principal's

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[1] (Sept. 5, 1914), 19 Cal. App. Dec. 324.

[2] (Sept. 5, 1914), 19 Cal. App. Dec. 324, 326.

[3] Renwick v. Wheeler (1880), 48 Fed. 431; Billings v. Morrow (1857), 7 Cal. 171, 68 Am. Dec. 235; Quay v. Presidio and Ferries R. R. Co. (1889), 82 Cal. 1, 22 Pac. 925.

place and stead.[4] Such a power should be more liberally construed than one merely general in its operation as to a particular purpose.[5] The principal not having seen fit to place any limitations on the agent the court should not do so for him.[6] Clearly the agent could not do any acts binding on the principal for the exclusive benefit of a third party or of the agent,[7] but having relied on the discretion of the agent he should be bound unless it would clearly appear to a reasonable person that the principal would not have so acted in the conduct of his own affairs.

Such powers as the above are frequently given in order that a person may have his business affairs attended to in his absence. The power is made general for the reason that unforseeable contingencies may arise and it is essential that the agent should have the same power to deal with the situation as the principal would have if present. The scope of the power should therefore be what might reasonably be considered for the benefit of the principal, that is, what the principal might reasonably do if himself present—in short, to vest in the agent the discretion of the principal. In this view of the case it is entirely immaterial that the wife's interest in the insurance policy was subject to being divested. It may be and often is extremely beneficial to protect contingent or expectant interests. Under the doctrine of the principal case, one assumes considerable risk in dealing with an agent under a general power, and unless the wording of the form in common use can be changed to make it really general, an absent principal will be greatly handicapped in the conduct of his business.

C. R. S.

ALIENS: RIGHT OF ALIEN TO ACQUIRE LAND BY DESCENT UNDER TERMS OF TREATY OF 1783 WITH SWEDEN.—In the absence of statute[1] or treaty[2] an alien cannot acquire realty by descent, at common law. The question whether a Swedish alien is entitled to inherit realty was raised by *Johnson v. Olson*[3] in the Kansas Supreme Court. It was not seriously contended that such a right existed except under section six of the "Treaty of Amity and Commerce", between the king of Sweden and the United States, negotiated in 1783.[4] The court held, that since the treaty was

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[4] Muth v. Goddard (1903), 28 Mont. 237, 72 Pac. 621; Auwarter v. Kroll (Wash., 1914), 140 Pac. 326; Seymour v. Oelrichs (1912), 162 Cal. 318, 122 Pac. 847, citing Moore v. Gould (1907), 151 Cal. 723, 91 Pac. 616.

[5] Moore v. Gould (1907), 151 Cal. 723, 91 Pac. 616; Waples-Platter Grocer Company v. Kinkaid (Kan., 1911), 119 Pac. 537.

[6] Veatch v. Gilmer (Tex., 1908), 111 S. W. 746.

[7] Muth v. Goddard (1903), 28 Mont. 237, 72 Pac. 621.

[1] For California provisions see Cal. Civ. Code, §§ 672, 1404.

[2] Blythe v. Hinckley (1900), 127 Cal. 431, 435, 59 Pac. 787.

[3] (July 7, 1914), 142 Pac. 256.

[4] 7 Fed. Stat. Ann. 827, and see note 5, infra.